

AMENDED IN ASSEMBLY MARCH 25, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 733

Introduced by Assembly Member Ma

February 17, 2011

~~An act relating to the public school system.~~ *An act to amend Sections 49076 and 49076.5 of the Education Code, relating to pupil records.*

LEGISLATIVE COUNSEL'S DIGEST

AB 733, as amended, Ma. ~~Public school system.~~ *Pupil records: privacy rights.*

Existing law prohibits a school district from permitting access to pupil records to any person without written parental consent or judicial order, except as provided.

This bill would make various changes to these pupil record provisions to conform them to federal law.

~~Existing law establishes the public school system in this state and, among other things, provides for the establishment of school districts throughout the state and for their provision of instruction at the public elementary and secondary schools they operate and maintain.~~

~~This bill would state the intent of the Legislature that would enact legislation that would enhance and improve the state public school system.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 49076 of the Education Code is amended*
2 *to read:*

3 49076. A school district ~~is not authorized to~~ *shall not permit*
4 *access to pupil records to any a person without written parental*
5 *consent or under unless pursuant to judicial order except that: as*
6 *set forth in this section and as permitted by Part 99 (commencing*
7 *with Section 99.1) of Title 34 of the Code of Federal Regulations.*

8 (a) Access to those particular records relevant to the legitimate
9 educational interests of the requester shall be permitted to the
10 following:

11 (1) School officials and employees of the district, members of
12 a school attendance review board appointed pursuant to Section
13 48321, and ~~any a~~ volunteer aide, 18 years of age or older, who has
14 been investigated, selected, and trained by a school attendance
15 review board for the purpose of providing followup services to
16 pupils referred to the school attendance review board, provided
17 that the person has a legitimate educational interest to inspect a
18 record.

19 (2) Officials and employees of other public schools or school
20 systems, including local, county, or state correctional facilities
21 where educational programs leading to high school graduation are
22 provided or where the pupil intends to or is directed to enroll,
23 subject to the rights of parents as provided in Section 49068.

24 (3) Authorized representatives of the Comptroller General of
25 the United States, the Secretary of Education, and ~~administrative~~
26 ~~head of an education agency,~~ state education officials, or their
27 respective designees, or the United States Office of Civil Rights,
28 where the information is necessary to audit or evaluate a state or
29 federally supported education program or pursuant to a federal or
30 state law, provided that except when collection of personally
31 identifiable information is specifically authorized by federal law,
32 ~~any~~ data collected by those officials shall be protected in a manner
33 ~~which that~~ will not permit the personal identification of pupils or
34 their parents by other than those officials, and ~~any~~ personally
35 identifiable data shall be destroyed when no longer needed for the
36 audit, evaluation, and enforcement of federal legal requirements.

37 (4) ~~Other state and local officials to the extent that information~~
38 ~~is specifically required to be reported~~ *In accordance with Section*

1 99.31 of Title 34 of the Code of Federal Regulations, state and
2 local officials or authorities to whom the information is specifically
3 allowed to be reported or disclosed pursuant to state law adopted
4 prior to November 19, 1974, and state and local officials or
5 authorities to whom the information is specifically allowed to be
6 reported or disclosed pursuant to state law adopted after November
7 19, 1974.

8 (5) Parents of a pupil 18 years of age or older who is a dependent
9 as defined in Section 152 of the Internal Revenue Code of 1954
10 1986.

11 (6) A pupil 16 years of age or older or having completed the
12 10th grade or older, or who has completed grade 10, and who requests
13 access.

14 (7) ~~Any district attorney who~~ A district attorney's office that
15 is participating in or conducting a truancy mediation program
16 pursuant to Section 48263.5, or Section 601.3 of the Welfare and
17 Institutions Code, or participating in the presentation of evidence
18 in a truancy petition pursuant to Section 681 of the Welfare and
19 Institutions Code. *For purposes of this paragraph, a truancy*
20 *mediation program under Section 48263.5 concerns the juvenile*
21 *justice system and the system's ability to effectively serve, prior*
22 *to adjudication, the pupil whose records are released, and the*
23 *disclosure of those records is permitted pursuant to, and consistent*
24 *with, Section 99.38 of Title 34 of the Code of Federal Regulations*
25 *as that section read on January 1, 2009.*

26 (8) A prosecuting agency for consideration against a parent or
27 guardian for failure to comply with the Compulsory Education
28 Law (Chapter 2 (commencing with Section 48200) of Part 27)
29 48200)) or with Compulsory Continuation Education (Chapter 3
30 (commencing with Section 48400) of Part 27) 48400)).

31 (9) ~~Any~~ A probation officer or district attorney's office
32 for the purposes of conducting a criminal investigation or an
33 investigation in regards to an investigation for juvenile
34 adjudication, declaring a person a ward of the court, or involving
35 a violation of a condition of probation, *where the records are*
36 *relevant to the legitimate educational interests of the pupil, as*
37 *these investigations concern the juvenile justice system and the*
38 *system's ability to effectively serve, prior to adjudication, the pupil*
39 *whose records are released, and disclosure of those records is*
40 *permitted pursuant to, and consistent with, Section 99.38 of Title*

1 34 of the Code of Federal Regulations as that section read on
2 January 1, 2009. Law enforcement records may be released without
3 consent, a subpoena, or a court order.

4 (10) ~~Any~~ A judge or probation officer for the purpose of
5 conducting a truancy mediation program for a pupil, or for purposes
6 of presenting evidence in a truancy petition pursuant to Section
7 681 of the Welfare and Institutions Code. *For purposes of this*
8 *paragraph, a truancy mediation program under Section 48263.5*
9 *concerns the juvenile justice system and the system's ability to*
10 *effectively serve, prior to adjudication, the pupil whose records*
11 *are released, and the disclosure of those records is permitted*
12 *pursuant to, and consistent with Section 99.38 of Title 34 of the*
13 *Code of Federal Regulations as that section read on January 1,*
14 *2009. The judge or probation officer shall certify in writing to the*
15 *school district that the information will be used only for truancy*
16 *purposes. A school district releasing pupil information to a judge*
17 *or probation officer pursuant to this paragraph shall inform, or*
18 *provide written notification to, the parent or guardian of the pupil*
19 *within 24 hours of the release of the information.*

20 (11) ~~Any~~ A county placing agency for the purpose of fulfilling
21 the requirements of the health and education summary required
22 pursuant to Section 16010 of the Welfare and Institutions Code or
23 for the purpose of fulfilling educational case management
24 responsibilities required by the juvenile court or by law and to
25 assist with the school transfer or enrollment of a pupil. School
26 districts, county offices of education, and county placing agencies
27 may develop cooperative agreements to facilitate confidential
28 access to and exchange of the pupil information by electronic mail,
29 facsimile, electronic format, or other secure means.

30 (b) School districts may release information from pupil records
31 to the following:

32 (1) Appropriate persons in connection with an emergency if the
33 knowledge of the information is necessary to protect the health or
34 safety of a pupil or other persons.

35 (2) Agencies or organizations in connection with the application
36 of a pupil for, or receipt of, financial aid. However, information
37 permitting the personal identification of a pupil or his or her parents
38 may be disclosed only as may be necessary for purposes as to
39 determine the eligibility of the pupil for financial aid, to determine
40 the amount of the financial aid, to determine the conditions ~~which~~

1 *that* will be imposed regarding the financial aid, or to enforce the
2 terms or conditions of the financial aid.

3 (3) The county elections ~~official~~, *official may obtain directory*
4 *information as defined in Section 99.3 of Title 34 of the Code of*
5 *Federal Regulations* for the purpose of identifying pupils eligible
6 to register to vote, and for conducting programs to offer pupils an
7 opportunity to register to ~~vote. The information, however, vote if~~
8 *the pupil's parent's, or pupils who are 18 years of age or older,*
9 *have not opted out of participation in this voter registration*
10 *activity. The directory information that may be disclosed pursuant*
11 *to this paragraph shall be limited to a pupil's name, address,*
12 *telephone number, e-mail address, and date of birth, and shall not*
13 *be used for any other purpose or given or transferred to any other*
14 *person or agency.*

15 (4) Accrediting associations in order to carry out their
16 accrediting functions.

17 (5) Organizations conducting studies for, or on behalf of,
18 educational agencies or institutions for the purpose of developing,
19 validating, or administering predictive tests, administering student
20 aid programs, and improving instruction, if the studies are
21 conducted in a manner that will not permit the personal
22 identification of pupils or their parents by persons other than
23 representatives of the organizations and the information will be
24 destroyed when no longer needed for the purpose for which it is
25 obtained.

26 (6) (A) Officials and employees of private schools or school
27 systems where the pupil is enrolled or intends to enroll, subject to
28 the rights of parents as provided in Section 49068. This information
29 shall be in addition to the pupil's permanent record transferred
30 pursuant to Section 49068.

31 **A**

32 (B) A person, persons, agency, or organization permitted access
33 to pupil records pursuant to this section ~~may~~ *shall* not permit access
34 to any information obtained from those records by any other
35 person, persons, agency, or organization, except for allowable
36 exceptions contained within the Family Educational Rights and
37 Privacy Act of 2001 (20 U.S.C. Sec. 1232g) and state law, without
38 the written consent of the pupil's parent. ~~However, this~~ *This*
39 *paragraph does not require prior parental consent when information*
40 *obtained pursuant to this section is shared with other persons within*

1 the educational institution, agency, or organization obtaining
2 access, so long as those persons have a legitimate *educational*
3 interest in the information *pursuant to Section 99.31 of Title 34 of*
4 *the Code of Federal Regulations*.

5 (c) Notwithstanding any other ~~provision of law, any~~ a school
6 district, including any county office of education or superintendent
7 of schools, may participate in an interagency data information
8 system that permits access *by authorized school officials* to a
9 computerized database ~~system within and between governmental~~
10 ~~agencies or districts as maintained by a noneducational~~
11 *governmental agency* to information or records ~~which that~~ are
12 nonprivileged, and where release is authorized as to the requesting
13 agency under state or federal law or regulation, if each of the
14 following requirements ~~are~~ *is* met:

15 (1) Each agency and school district shall develop security
16 procedures or devices by which unauthorized personnel cannot
17 access data contained in the system.

18 (2) Each agency and school district shall develop procedures
19 or devices to secure privileged or confidential data from
20 unauthorized disclosure.

21 (3) Each school district shall comply with the access log
22 requirements of Section 49064.

23 (4) The right of access granted shall not include the right to add,
24 delete, or alter data without the written permission of the agency
25 holding the data.

26 (5) An agency or school district ~~may~~ *shall* not make public or
27 otherwise release information on an individual contained in the
28 database where the information is protected from disclosure or
29 release as to the requesting agency by state or federal law or
30 regulation.

31 (6) *A school district, including a county office of education or*
32 *superintendent of schools, shall not disclose personally identifiable*
33 *pupil information from educational records into this interagency*
34 *data information system unless permitted by Part 99 (commencing*
35 *with Section 99.1) of Title 34 of the Code of Federal Regulations.*

36 SEC. 2. *Section 49076.5 of the Education Code is amended to*
37 *read:*

38 49076.5. (a) Notwithstanding Section 49076, each school
39 district shall release ~~any the~~ information it has specific to a
40 particular pupil's identity and location that relates to the transfer

1 of that pupil's records to another school district within this state
 2 or any other state or to a private school in this state to a designated
 3 peace officer, upon his or her request, when a proper police purpose
 4 exists for the use of that information. *As permitted by Part 99*
 5 *(commencing with Section 99.1) of Title 34 of the Code of Federal*
 6 *Regulations, the designated peace officer, or law enforcement*
 7 *agency, shall show the school district that the peace officer or law*
 8 *enforcement agency has obtained prior written consent from one*
 9 *parent, or provide information indicating that there is an*
 10 *emergency in which the information is necessary to protect the*
 11 *health or safety of the pupil, or that the peace officer or law*
 12 *enforcement agency has obtained a lawfully issued subpoena or*
 13 *a court order.*

14 (b) In order to protect the privacy interests of the pupil, a request
 15 to a school district for pupil record information pursuant to this
 16 section shall meet the following requirements:

17 (1) For ~~the~~ purposes of this section, "proper police purpose"
 18 means that probable cause exists that the pupil has been kidnapped
 19 and that his or her abductor may have enrolled the pupil in a school
 20 and that the agency has begun an active investigation.

21 (2) Only designated peace officers and federal criminal
 22 investigators and federal law enforcement officers, as defined in
 23 Section 830.1 of the Penal Code, whose names have been submitted
 24 to the school district in writing by a law enforcement agency, may
 25 request and receive the information specified in subdivision (a).
 26 Each law enforcement agency shall ensure that each school district
 27 has at all times a current list of the names of designated peace
 28 officers authorized to request pupil record information.

29 (3) This section does not authorize designated peace officers to
 30 obtain any pupil record information other than that authorized by
 31 this section.

32 (4) The law enforcement agency requesting the information
 33 shall ensure that at no time shall ~~any~~ information obtained pursuant
 34 to this section be disclosed or used for ~~any~~ a purpose other than
 35 to assist in the investigation of suspected criminal conduct ~~of or~~
 36 kidnapping. A violation of this paragraph shall be punishable as
 37 a misdemeanor.

38 (5) The designated peace officer requesting information
 39 authorized for release by this section shall make a record on a form
 40 created and maintained by the law enforcement agency ~~which that~~

1 shall include the name of the pupil about whom the inquiry was
2 made, the consent of a parent having legal custody of the pupil or
3 a legal guardian, the name of the officer making the inquiry, the
4 date of the inquiry, the name of the school district, the school
5 district employee to whom the request was made, and the
6 information that was requested.

7 (6) Whenever the designated peace officer requesting
8 information authorized for release by this section does so in person,
9 by telephone, or by some means other than in writing, the officer
10 shall provide the school district with a letter confirming the request
11 for pupil record information prior to any release of information.

12 (7) No school district, or ~~official~~ *officer* or employee ~~thereof~~ *of*
13 *the school district*, shall be subject to criminal or civil liability for
14 the release of pupil record information in good faith as authorized
15 by this section.

16 ~~SECTION 1. It is the intent of the Legislature to enact~~
17 ~~legislation to enhance and improve the state public school system.~~